language of our statute is too plain for construction. In the North Carolina statute, like ours, the words "torment," "torture," and "cruelty" include every act whereby unnecessary or unjustifiable pain or suffering is caused. The shooting of wild animals in the forest and fishing in the streams do not come within the statute. We have other laws covering these things, and they are permitted at certain seasons of the year. Every act that causes pain and suffering to animals is not prohibited. Where the end or object in view is reasonable and adequate, the act resulting in pain is, in the sense of the statute, necessary or justifiable, as where a surgical operation is performed to save life, or where the act is done to protect life or property, or to minister to some of the necessities of man. But the killing of captive doves as they are released from a trap, merely to improve one's skill of marksmanship, or for sport and amusement, though there is no specific intention to inflict pain or torture, is, within the meaning of this act, unnecessary and unjustifiable. The same degree of skill may otherwise be readily acquired, and so there was no necessity for the shooting of these doves. Other rational sport and amusement are within easy access of the gentlemen of the Country Club, and so the avowed object of this shooting is neither adequate nor reasonable; hence, under this act, unjustifiable.

Where, as here, the acts charged are admittedly done, not to furnish food, but merely for the sport and amusement of the defendant and his associates, the facts clearly bring the case within the ban of the statute. In contemplation of this law, the pain and suffering caused by such acts are disproportionate to the end sought to be attained, and furnish no adequate or reasonable excuse for the acts which, to be necessary or justifiable, must be prompted by a worthy motive and a reasonable object. The judgment, for the reasons given, is affirmed. Affirmed.

SHARP v. McINTIRE.

(Supreme Court of Colorado. June 29, 1896.)

ELECTIONS—VOTERS—RESIDENCE—DECLARATIONS—RES GESTÆ—WITNESS—COMPETENCY.

1. Const. art. 7, § 1 (Mills' Ann. St. § 1571), which requires a voter to reside in the state six months immediately preceding an election, to be entitled to vote, means an actual settlement within the state, adopted as a fixed habitation.

2. On the issue of residence of voters, declarations made by them at the time of voting, in the presence of the judges of election, are admissible as a part of the res gestæ.

3. Where declarations were made through an interpreter, a witness is competent to testify to such declarations only as he understood without the aid of the interpreter.

Appeal from Lincoln county court.

Action by Robert B. Sharp against Archibald McIntire, to contest an election as county commissioner. From a judgment in favor of defendant, plaintiff appeals. Reversed.

At the general election of 1895 in Lincoln county, Colo., Robert B. Sharp and Archibald McIntire were rival candidates for the office of county commissioner of said county. Upon the canvass of the votes cast at such election for that office, McIntire was elected by a majority of four votes, and a certificate of election issued to him. His election is contested by Sharp upon the sole ground that there were cast in Rush Creek voting precinct, No. 5, in said county, nine votes for McIntire which were illegal, by reason of the lack of the residence qualification of the voters casting the same, in this, to wit: that the true place of residence of eight of said illegal voters—Trinidad Gomez, Nazarus Gallegos, Andreas Medina, Victor Anallina, Vincent Garcia, Juan Martinez, Antonio Martinez, and Francisco Quintana—was at the date of said election in the territory of New Mexico, and the true residence of one Alario Medina was at the time in Costilla county, Colo. It is admitted in the pleadings that said votes were cast for McIntire. Trinidad Gomez was introduced as a witness on the part of contestor. His testimony was to the effect that his home, and also that of Francisco Quintana, Nazarus Gallegos, and Antonio Martinez, was at Cerro, N. M., where their wives and families lived; that they came to Lincoln county, Colo., in the spring, to work during the summer, and at the close of their season's work returned to their homes and families, at Cerro, N. M.; that he (Gomez) had been in the habit of so coming to Colorado since 1890; that the others had also been doing the same for several years; that in 1895 he came on March 27th, to remain eight months; that when he was subpœnaed as a witness in the case he was on his way home, having received word that his wife was sick; that the other parties named had then returned to their homes, in New Mexico; that these parties did not bring their wives or families to Lincoln county. He testified that he did not know Andreas Medina, Alario Medina, or Juan Martinez. Sharp was sworn in his own behalf, and testified that he was appointed watcher and challenger at the polls in Rush Creek voting precinct, No. 5, at the election on November 5, 1895, and that he challenged the above-named parties' right to vote at such election. Upon objection by counsel for contestee, witness was not allowed to testify to the conversation he had with these parties. His counsel thereupon offered to prove by him that he (Sharp), at the time these parties appeared to cast their vote, had the following conversation with them: That when Trinidad Gomez, Francisco Quintana, and Nazarus Gallegos appeared at the polls to cast their vote, he asked each of them the following question: "Q. Are you a married man?" That they, and each one of them, answered: "A. Yes; I am." That Sharp then said to them, and each one of them: "Q.

Where do you live?" That they, and each one of them, answered the said Sharp: "A. At Cerro, New Mexico." That said Sharp then asked them, and each one of them: "Q. Where do your wife and family live?" And that they, and each one of them, answered said Sharp that they lived at Cerro, N. M. He also offered to show by this witness that the same conversation occurred, in the same interval before they voted, with Andreas Medina, Vincent Garcia, Juan Martinez, and Antonio Martinez, and that the conversations were identically the same, except that said voters did not state the name of the town, but limited their answers to the fact that they and their wives and children lived and resided in New Mexico. Counsel offered to show by the same witness that he had a similar conversation, under similar circumstances, with Alario Medina, who stated that his residence and the residence of his family was in the San Luis Valley, in Costilla county, Colo. Upon objection of counsel for contestee this evidence was excluded. The determination of the court below was adverse to contestor, and in favor of contestee. From this judgment, Sharp prosecutes this appeal.

Talbot & Denison, for appellant. Kinkaid, Eddy & Hart and T. J. Edwards, for appellee.

GODDARD, J. (after stating the facts). One of the essential qualifications of a voter prescribed by our constitution and statute is that he shall reside in the state 6 months immediately preceding the election at which he offers to vote, in the county 90 days, and in the ward or precinct 10 days. Section 1, art. 7, of the constitution (section 1571, Mills' Ann. St.). The merits of this controversy, therefore, depend upon the construction to be given to the residence qualification thus prescribed. It is contended by counsel for contestee that the word "reside," as therein used, signifies to dwell, abide, or live in the state, and that when a person has actually lived in the state the specified time he meets this requirement. With this construction of the word we cannot agree. We think the residence therein contemplated is synonymous with "home" or "domicile," and means an actual settlement within the state, and its adoption as a fixed and permanent habitation, and requires, not only a personal presence for the requisite time, but a concurrence therewith of an intention to make the place of inhabitancy the true home, and that one who has made a home or domicile in some other state or territory, where his family reside, cannot, by a sojourn here on business or pleasure, however long, without *abandoning* such former domicile, acquire a residence, in the constitutional and statutory sense. Such is the meaning and signification given to the word by the courts of other states, when used for a like purpose in their constitutions. Fry's Election Case, 71 Pa. St. 302; 5 Metc. (Mass.) 587; French v. Lighty, 9 Ind. 475; State v. Aldrich, 14 R. I. 171. In 5 Metc., supra, in answer to a question propounded by the house of representatives, the supreme court of Massachusetts, construing a similar provision of their constitution, held that the words "shall have resided" meant the same as "shall have had his domicile, or home," and that a student had no right to vote at the place where he resided for purposes of education, though he had been there more than a year, unless his domicile was also there. In Fry's Election Case, supra, Judge Agnew, speaking for the court, said: "No one doubts that one domiciled in another state, but resident here for a special purpose of business or pleasure, is ineligible to election. * * * It is equally clear that the electors of the state are those who have their homes within it, and not elsewhere. Their domicile is there, and their home is the place where they permanently reside, and to which they intend to return when away from it. It is also clear that one domiciled in another state cannot be an elector here, though he be resident here for some temporary purpose, or on some special business, and though his stay may be prolonged upwards of a year. Therefore, when the constitution declares that the elector must be a resident of the state for one year, it refers, beyond question, to the state as his home or domicile, and not as the place of a temporary sojourn." We think there can be no doubt that, in adopting this constitutional provision, the convention intended to adopt it with the construction that had theretofore been given it. And we think the court below erred in ignoring, as it evidently did, this necessary qualification of some of the voters challenged. It is further urged that the court also erred in excluding the alleged declarations of the parties. While it is held in some of the authorities that the unsworn declarations of a voter are inadmissible to impeach his qualification to vote, when made prior or subsequent to the time of voting, upon the ground that they are hearsay, and among them the case of People v. Com'rs of Grand Co., 7 Colo. 190, 2 Pac. 912, we know of no case that holds that such declarations are inadmissible when made concurrently with the act of voting, and constitute a part of the res gestæ. Abundant authority is found that upholds the admissibility of declarations made under such circumstances. Among them, see City of Beardstown v. City of Virginia, 81 Ill. 541; Rucks v. Renfrow, 54 Ark. 409, 16 S. W. 6; Patton v. Coates, 41 Ark. 111. In Gilleland v. Schuyler, 9 Kan. 569, wherein it was held that statements of third parties as to the number of times and the names under which they voted were hearsay and incompetent, and were excluded because relating to past transactions, yet the court say, "These declarations were not

made at the polls by persons conducting the election, and so as to make part of the res gestæ; nor do they accompany a principal fact which they serve to qualify or explain." We think, therefore, that the declarations sought to be introduced in evidence in this case, having been made at the immediate time of voting, in the presence of the judges of election, were admissible, if properly proven; and the court erred in excluding them on the ground, solely, that they were hearsay. It appears that the conversation had with some of the parties was through an interpreter, and their answers were in Spanish. The witness, therefore, was competent to testify only to such declarations as he understood without the aid of an interpreter. For the foregoing reasons the judgment of the county court is reversed, and the cause remanded. Reversed and remanded.

In re HOUSE.

WILLIAMSON v. BOARD OF COM'RS OF ARAPAHOE COUNTY.

(Supreme Court of Colorado. June 29, 1896.)

CONSTITUTIONAL LAW—TREATMENT OF INEBRIATES AT COUNTY EXPENSE.

1. Const art. 5, § 34, which declares that "no appropriation shall be made for charitable, industrial, educational, or benevolent purposes, to any person, corporation, or community, not under the absolute control of the state, nor to any denominational or sectarian institution or association," relates to the disbursement of state funds only, and is not violated, therefore, by an act conferring on counties the power to use county funds in the treatment and cure of their indigent inebriates in the manner provided thereby.

2. Sess. Laws 1895, c. 74, which provides for the sending of indigent inebriates to an institute for treatment and cure, on petition of 10 freeholders of the county, did not extend any governmental powers to the institute, within the meaning of Const. art. 5, § 35, which declares that "the general assembly shall not delegate to any special commission, private corporation, or association, any power to make, supervise, or interfere with any municipal improvements, money, property, or effects, whether held in trust or otherwise, or to levy taxes, or perform any municipal function whatever."

Error to Arapahoe county court.

Application, on the petition of John D. Williamson, to send William T. House to the Keeley Institute for treatment at the county expense. From a judgment denying the application, the applicant brings error. Reversed.

Mullahey & Rice, H. T. Sale, and Charles M. Rigley, for plaintiff in error. Goudy & Twitchell, for defendant in error.

GODDARD, J. An application was made to the county court of Arapahoe county, asking for an order to send William T. House to the Keeley Institute, at Denver, Colo., at the expense of the county, for treatment and cure, as a drunkard, under the provisions of chapter 74, Sess. Laws 1895. The proceeding is in conformity with the requirements of the act, and the facts disclosed in the record clearly bring the case within its provisions. The court below denied the order solely upon the ground that the statute was unconstitutional, and this is the only question presented for our determination. The act, by its first section, provides: "Any friend of an habitual drunkard, * * * or any officer of any charitable organization, may file a petition in the county court in the county where such drunkard may reside, setting forth the sex, financial condition, the age, as near as may be, and the nature and extent of the disease of such drunkard in reference to the use of alcoholic, narcotic or other stimulants, and stating the belief of petitioner or affiant that such disease has passed beyond the control of said drunkard, and asking for an order to send such drunkard to an institution for the treatment of such disease at the expense of the county. The petition or affidavit may also contain such other facts as the applicant may deem proper in order to inform the court of the condition of such drunkard. Such petition shall be verified by the petitioner, and the petition or affidavit shall be approved and signed by ten (10) freeholders of the county." Section 2 provides for the hearing of such petition upon notice to the county attorney, and to the drunkard, unless he voluntarily appears, and that, if it appear to the county judge that the matters set forth in the petition are true, and that the said drunkard has been a bona fide resident of the county at least six months preceding, and is financially unable to pay for the treatment of said disease, and has consented and agreed thereto, the county judge shall immediately make an order directing that he be sent to an institution for the cure of drunkenness within the state, at the expense of the county. Section 4 provides for the verification and presentation of its claim for the treatment of such drunkard, by the manager or person in charge of the institution furnishing such treatment. Section 5 provides that, upon presentation of such claim "to the board of county commissioners of the county of the drunkard's residence, they shall allow the same, as in case of other claims against the county, and make an order on the county treasurer for the payment of the same: provided, all such claims shall be reasonable and not in excess of current rates; that no such claim shall be allowed for a greater amount than twenty-five (25) dollars per week for the treatment, including medical attendance and medicines of such drunkard, nor for a greater amount than seven (7) dollars per week for his board, lodging and keeping." Section 6 defines a drunkard as "any person who has acquired the desire of using alcoholic or malt drinks, morphine, opium, cocaine or other narcotic substance used for the purpose of producing intoxication, to such a degree as to deprive him or her of reasonable self-control."

The object sought to be attained by this act is to provide for a class of its poor who have